IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1123 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JATINBHAI N SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 1123 of 2002

MR SV RAJU with MR RJ GOSWAMI for Petitioner No. 1

MR VM PANCHOLI ADDL. PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 08/04/2002

ORAL JUDGEMENT

#. This is an application under Section 482 of the Criminal Procedure Code, 1973 for setting aside the judgment and order dated 8.2.2002 recorded by the learned Additional Sessions Judge, Vadodara, in Criminal Revision

Application No.34/2002.

#. The petitioner herein is an accused arrested in offence at CR No.II-185/2001 registered before the Sayajiganj Police Station at Vadodara for the offences punishable under Section 284 read with 114 of the I.P.C. The FIR was filed on 26.10.2001 at about 8:00 A.M. Thereafter, the present petitioner was arrested on the same date and was produced before the learned Judicial Magistrate First Class, concerned.

#. In response to the request of the police investigating agency, the petitioner was remanded to police custody upto 15:30 hrs. on 4.2.2002. Thereafter, on 4.2.2002 the petitioner was not produced before the learned Magistrate and it was submitted that the petitioner and the Investigating Officer were in transit and, therefore, further remand may be granted. The learned Magistrate granted further police remand upto 5.2.2002. In the meantime, thereafter, the request was made for extending the police remand of the petitioner on 5.2.2002. The learned Magistrate rejected the said application, but permitted the interrogation of the petitioner while in judicial custody.

#. On 6.2.2002 Criminal Revision Application No.34/2002 was submitted and it was disposed of by the learned Additional Sessions Judge, Vadodara, on 8.2.2002 granting remand in the police custody for a period of 5 days.

#. Feeling aggrieved by the said judgment and order of the learned Additional Sessions Judge, the petitioner has preferred this application under Section 482 of the said Code for quashing and setting aside the order.

#. Rule was issued. Mr.V.M.Pancholi, learned APP appears for the State.

#. I have heard the learned advocates for the parties and have perused the papers.

#. The aforesaid facts are not much in dispute. The learned advocate for the petitioner has heavily attacked on the order of the learned Magistrate granting police remand on 4.2.2002. It has been contended that the petitioner was not produced before the learned Magistrate and, therefore, the police remand could not be granted by the learned Magistrate without production of the petitioner before him. It is true that the provision in the Code makes it clear that at the time when a police remand is sought the accused is required to be produced

before the Magistrate. Admittedly, the same has not been done on 4.2.2002. The petitioner was not produced before the learned Magistrate and yet police remand was sought and it was granted.

#. However, the petitioner was produced before the learned Magistrate on 5.2.2002 and on that day police remand was rejected. This means that the order of the learned Magistrate dated 4.2.2002 granting one day remand has already been complied with and the petitioner was already remanded in police custody for the said period i.e. from 4.2.2002 to 5.2.2002. In that view of the matter, when the order has been complied with it would not be just and proper for this Court to set it aside.

##. It is, thereafter, contended that the order dated 4.2.2002 is illegal as the petitioner was not produced before the learned Magistrate and the subsequent order of the learned Additional Sessions Judge, Vadodara dated 8.2.2002 also be treated illegal. When the first order of 4.2.2002 has already been complied with and since the said order is not required to be quashed by this Court, the above ground will not be available to the present petitioner.

##. It is next contended that the charge-sheet has already been filed before the trial Court against the present petitioner alongwith the other accused and, therefore, no remand can be granted in view of provision of Section 167 of the said Code. It is very clear that so far as Section 167 of the said Code is concerned it deals with the situation in which the investigation cannot be completed in 24 hours. Even in the marginal note it has been so stated in Section 167 of the said Code. Apart from the said marginal note Sub-Section (1) of Section 167 of the said Code makes it clear that the provision can be put to force when it appears that the investigation cannot be completed within the period of 24 hours.

##. This means that the provision of Section 167 can be put to use when the investigation cannot be completed or has not been completed in accordance with the requirement of the Section 167 read with Section 57 of the said Code.

##. Even Section 173 of the said Code states that the report of the Police Officer is required to be submitted on completion of the investigation if it is found that the offence against the accused has been made out. The report of the Investigating Officer would be on that line and in accordance with the provision of Section 173 of

the Code. In the present case final report in the form of charge-sheet has already been filed in accordance with the requirement of Section 173 and this would mean that the investigation has been concluded against the petitioner also.

##. The learned APP Mr. Pancholi argues here that since the period of 90 days was about to be completed, the charge-sheet was required to be filed otherwise the accused person in judicial custody would be entitled to default bail. Now, the present petitioner was not arrested long back as said above and was arrested on 28.1.2002. Therefore, the period of his detention in custody did not exceed the said period and, therefore, if the investigation was not over in respect of the present petitioner, the Investigating Officer could have avoided filing of the charge-sheet against the present petitioner and he could have filed charge-sheet against the remaining accused persons.

##. When the Investigating Officer opted to file the charge-sheet against the present petitioner, it cannot be said that it was done with a view to overcome the aforesaid difficulty of default bail. The petitioner could not have been enlarged on default bail since he was arrested on 28.1.2002 and period of 90 days has yet not expired.

##. On a closed reading of Section 57 with Section 167 and 173 of the said Code, it becomes clear that the accused person cannot be remanded to police custody after submission of the charge-sheet.

##. It has been contended here that the application for police custody was already filed before the submission of the charge-sheet. However, even thereafter the charge-sheet has been filed and it would not be open to Court concerned to grant police remand of the accused after submission of the charge-sheet. Even otherwise, it is a fact that the petitioner was under police custody for a long period between 28.1.2002 and 5.2.2002. Even after 5.2.2002, the Investigating Officer was permitted to have interrogation of the petitioner in jail. This shows that sufficient time was at the disposal of the Investigating Officer for getting the materials to connect the petitioner with the crime in question. Therefore, no useful purpose will be served by granting the application and by remanding the petitioner to the police custody. In above view of the matter, judgment and order of the learned Additional Sessions Judge, Vadodara, cannot be treated legal and, therefore, they

are required to be quashed and set aside.

##. For the reasons stated above, this application is allowed. The judgment and order dated 8.2.2002 recorded by the learned Additional Sessions Judge, Vadodara, in Criminal Revision Application No.34/2002 are ordered to be quashed and set aside. Rule is made absolute. Learned advocate for the petitioner has not argued and pressed the prayer for bail. Naturally the petitioner will be at liberty to make appropriate application before the appropriate Court for the said purpose.

(D. P. BUCH, J.)

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